FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

SECOND APPEAL No. 832 of 2006.

Office Notes,Office Memorandum of Coram apperance,Court's Orders & Directions and Registrar's Order.	Court or Judge's Order.

Shri. P.N. Karlekar, Advocate
for the Appellants.

CORAM: S.B.DESHMUKH,J.

DATED: 13.10.2006.

P.C.:-

1] The appellants in this Second Appeal were the defendants in R.C.S.No.45 of 1996, filed in the Court of the learned Civil Judge, J.D. Kalwan, District Nashik. In that suit, respondent no.1 was the plaintiff. Parties hereinafter referred to their status as the "plaintiff" and the "defendants" in R.C.S.No. 45 of 1996. The plaintiff had filed R.C.S. No. 45 of 1996 for permanent injunction. The plaintiff has alleged right to suit way

and sought perpetual injunction. The defendants after appearance filed W.S. at Exh.25. The Trial Court framed as many as four issues. Issue no.1 was in respect of the existence of the suit way. Issue no.2 was in respect of alleged obstruction by the defendants. Issue no.3 framed by the Trial Court was in respect of the entitlement of the plaintiff for perpetual injunction. The trial Court dismissed the plaintiff's suit by judgment and decree passed on 29th April, 1998.

2] The defendants, had filed an Appeal under Section 96 read with Order 41 of the C.P.C. challenging the judgment and decree passed in R.C.S. No. 45 of 1996 in the Court of the learned District Judge at Nashik. It was Civil Appeal No. 225 of 1998. The first appellate court framed as many as three points for determination. The first Appellate Court framed point no.1 in respect of the alleged right of way claimed by the plaintiff to approach to

their field. Point no.2 was in respect of the entitlement of injunction by the plaintiff.

3] The first appellate court referred to the document Exh.35. Relationship between the parties is admitted. They are step brothers. Partition did take place during the life time of their father. It is reduced into writing. Document Exh.35 is on record. It is also referred by the Trial Court in para 14 of the judgment. This document clearly refers/provides the right of way i.e. road having 12 feet width, from survey no. 97 in east-west direction. This document also refers the right to use the road by the original plaintiff Mr.Shrawan alias Chindha. The first appellate Court allowed the appeal by quashing and setting aside the decree of the dismissal of the suit by the trial Court.

4] I heard the learned counsel for

the appellants/defendants. I also perused the finding of the trial Court regarding oral as well as documentary evidence and more specifically document Exh.35. The first appellate court has considered the oral evidence as well as the document of partition deed i.e. document Exh.35 and justifiably quashed and set aside the judgment of the trial Court.

5] Since the judgment delivered by the first appellate court is a judgment of reversal, I have carefully considered the finding recorded by the trial Court. In my view, first appellate court has referred to the oral as well as documentary evidence and also provisions laid down under Section 13 of the Indian Easements Act, 1952. It is not the case that the first appellate court accepted the evidence which is not legally admissible. It is also not the case that the first appellate court left over the admissible evidence and quashed and set aside the judgment of the trial

court. There is no substantial question of law within the parameters of Section 100 of C.P.C. involved in this appeal. In the result, the appeal stands dismissed in limini. No costs.

[S.B.DESHMUKH,J.]